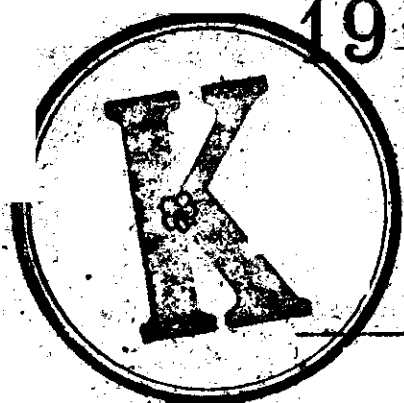




1950

File No. O.I.P.(E.P.)
Legal Department /50

A BRANCH

Subject:— Opinions under the
Indian Press (Emergency
Press) Act 1931

P 20 (E)

File No. O.I.P.(E.P.)/50

Gen. 194

14-H

C O N T E N T S

Legal Department File No. O.I.P. (E.P.)/50

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V.H.D./11-6-
50.

Exhibit.

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether a news-board containing public news and publicly exhibited by the R.S.D. at Chinchwad is an unauthorized news-sheet, and whether the writer of the news-board is guilty of an offence under section 18(1) of the Indian Press (Emergency Powers) Act, 1931.

2. The Secretary Home Department, thinks that a news-board does amount to a news-sheet but doubts whether an offence under section 18 is committed; for, as he reads the section 'exhibits' goes with 'sells', and it is doubtful whether the writing on the board amounts to publication. Section 18(1) of the Indian Press (Emergency Powers) Act, 1931, provides that whoever makes, sell, distributes, publishes or publicly exhibits or keeps for sale, distribution or publication any unauthorized news-sheet or news-paper shall be punishable etc. Assuming that the news-board is a news-sheet, the case would clearly be covered by the underlined words. The person who writes the matter on the news-board can certainly be said to have made it. Similarly, he should also be said to have published it when he kept it on view for reading by the public in a public place. By 'publishing' we mean making generally known; sending forth any matter for general knowledge. However, the main difficulty in this case is that it is extremely doubtful whether a news-board of this kind will be treated as a news-sheet. 'News-sheet' is defined to mean any document other than a newspaper containing public news or comments on public news etc.; and 'document' includes also any painting, drawing or photograph or other visible representation. The word 'document' must naturally be construed in accordance with the object of the Act which is to provide for the better control of the press; and in that respect we may contrast it with the wide definition of the word 'document' in the Evidence Act which there means any matter expressed or described upon

any substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used for the purpose of recording that matter. The Indian Press (Emergency Powers) Act is thus intended to apply to some thing which is connected with Press, whether the printed matter be writing or pictures or photographs etc.; and it cannot possibly be maintained that the Magistrate's authorization is necessary for publishing a news-board of this kind under section 15(1) of the Act. Court will not, therefore, be inclined to extend the Act to news-Boards of the above kind. Some indication of that we have from the case of Mrs. P.B. Bharucha v. Crown (I.L.R. 23 Lahore 553).

3. In my opinion, therefore, it is very doubtful whether prosecution for the offence under section 15(1) will succeed.

Sd/- P.M. Lad
21.1.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1046, dated the 23rd January 1950.

21

Office of the R.L.A.

A copy of R.L.A.'s opinion dated 18.5.1932 has not been retained on the records of this office. On a reference to the underlying nothing, however, it appears that even at then a doubt was expressed whether the definition in section 2(6) would be applicable to an inscription upon a stone. R.L.A.'s opinion dated 18.5.1932 gives no consideration to the scope of the enactment and makes no reference to the distinction in the definitions of "document" as given in the Indian Press (Emergency Powers) Act, 1931, and the Indian Evidence Act. Having regard to the arguments given in my opinion No. 1046 dated 23rd February 1950, I am still of opinion that Courts will not extend to the Indian Press (Emergency Powers) Act news-boards of the kind considered therein. If H.D. so desires, a reference will be made to the Advocate General.

Sd/- P.H.Lad.
8.3.50.

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll.) No.3284, dated the 9th March 1950.

V.M.D./9-5
4c.

Indian Press
(Emergency Powers)
Act, 1931, sec. 4
Booklet
entitled "Echoes
from Amballa" & c.

The question for the consideration of the
Remembrancer of Legal Affairs is whether the booklet
entitled "Echoes from Amballa" is objectionable.

2. "Echoes from Amballa" is a compilation of letters
written by Mathuram Godse to his parents, brothers and
others. These letters were censored by Government
before they reached the addressees. In these letters,
Mathuram Godse has tried to justify his action in
assassinating Mahatmaji and according to him he was
actuated with the purest of motives and for the better-
ment of mankind. The only passage to which some
objection could be taken is at page 44 of the booklet
and forms part of the letter addressed to his parents.
That passage runs thus:

"You are a student of Geeta and you have also
studied the Puranas. Shrikrishna has given the
message of Geeta and he killed Shishupal, an Aryan
King, by his Sudarshan Chakra, not indeed on the
battlefield but on the holy sacrificial grounds.
Does any one dare to say that Shrikrishna committed
a crime? Lord Krishna, in war and otherwise, killed
many a self opinionated and influential persons for
the betterment of the world and even in Geeta he
has time and again counselled Arjuna to kill his
near and dear ones and ultimately persuaded him
to do so."

It is possible to construe this passage as an indirect
incitement to political murders. But since Mathuram's
outrageous action has been universally condemned and
punishment has also been meted out, any justification
on his part at this stage even by quoting the scriptures
would not ordinarily now excite the people to violence.
Consequently, the principle enunciated in Faraj Islam v.
Emperor (1943 Allahabad Law Journal 168) that the ideas,
sentiments and expressions which have become part and
parcel of normal political life of the country and which
do not tend to excite people to disorder may be ignored,
will apply to the present case. Besides, under
article 19(1)(a) of the Constitution of India, all
citizens have the right to freedom of speech and
expression and this right is subject to restrictions

contained in article 19(2) which inter alia provides that nothing in sub-clause(a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, any matter which undermines the security of or tends to overthrow, the State. The provisions in section 4(1) of the Indian Press (Emergency Powers) Act, 1931, would be deemed to be modified to the extent provided in article 19(2). The offending passage does not appear to contain such strong expression as would undermine the security of, or would tend to overthrow, the State. In the circumstances, "Echoes from Amabilla" does not appear actionable.

3. In the linked case (H.D. File No. 742/25323) leaflets I to V written by Nathuram Godse are for consideration. Leaflets II to V are contained in the "Echoes from Amabilla;" so no separate consideration in respect of these leaflets is required. Leaflet 1 contains Godse's critical review of the book entitled "The Story of a Refugee" written by Mr. Madkholkar, a Marathi writer. While reviewing that book, Godse has reiterated his defence of the assassination of Mahatmaji. He has tried to explain what prompted him to commit this hideous crime. According to him Mahatmaji agreed to the partition of India without consulting the people and secondly, even after partition, in spite of the greatest provocation as a result of blood curdling atrocities committed in Pakistan on helpless Hindu men, women and children, Mahatmaji instead of suggesting any reprisals, came out with an offer of Rs. 50 crores to Pakistan as if it were a reward for the atrocities committed by the Muslims there. These acts of Mahatmaji led him to believe that hero-worship had blinded the reason and that unless Mahatmaji himself was removed it was not possible to restore reason and to achieve the integration of India, an ideal for which he stood and for which he was ready to dedicate his life. No doubt, in the course of this leaflet Nathuram Godse has tried to show that the assassination of Mahatmaji

was in the interest of the nation itself and he was a martyr for the cause of the nation, but nowhere has he suggested any incitement to the people nor any methods to undermine the security of the State. The leaflet does not, therefore, seem actionable under section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

2. It appears from the Government's Secret letter at page 43 of the linked case that Government considers that these leaflets are unauthorized news-sheets within the meaning of section 2, clauses (6) and (10), of the Indian Press (Emergency Powers) Act, 1931. Section 2, clause (10) defines "unauthorised news-sheet" as meaning any news-sheet other than a news-sheet published by a person authorized under section 15 to publish it. "News-sheet" as defined in clause (6) means any document other than a newspaper containing published news or comments on published news or any matter described in sub-section (1) of section 4. As stated above, these leaflets do not offend against the provisions of sub-section (1) of section 4 for the matter published or commented on. To fall within the definition of "news-sheet" there must be an element of novelty about it. A pamphlet containing nothing but a discussion of food problem and the necessity of suppressing hoarding enforced by a reference to the Bengal famine would not be a news-sheet within the meaning of clause (6) of section 2 (see I.L.R. 1941. Lahore. 553). The leaflets in question do not contain any elements of novelty. The idealist ideology of Nathuram Godse which inspired him to commit the atrocious murder of Mahatmaji has been discussed ad nauseam. Consequently, these leaflets do not contain anything new and, therefore, they would not be news-sheets as defined in clause (6) of sec. 2. If they are not news-sheets, the question of their being unauthorised news-sheets under clause (10) of sec. 2 would not arise.

Sd/- P.M.LAD/15.3.

Remembrancer of Legal Affairs.

Office of the R.L.A.

The criticism of Government's measures and policies contained in the resolutions will be protected by Explanations ~~and~~ 3 to section 4 of the Indian Press (Emergency Powers) Act, 1931. The advice to the effect that every attack on the working of class must be resisted and the All India Students' Federation units must not wait till the Government actually attacks the working class does not warrant an unmistakable inference of exhortation to violent action. In any case it is not strong enough to satisfy the standard of "undermining the security of or tending to overthrow the State" laid down in Article 19(2) of the Constitution.

Sd/- P.M.Lad.
22.3

Remembrancer of Legal Affairs.

U.R. to H.D. (Political), No. 4041, dated the 23rd March

Office of the R.L.A.

It appears that at a public meeting held at Pandharpur Shri. Jureshastri made a personal attack on the Hon'ble Dr. Ambedkar by saying that, "because he is a Mahar, the provisions of the Hindu Code Bill drafted by him are not sacred or pure in much the same way as milk or water of the Ganges would be polluted if it flowed through a drain or gutter." The question raised for the R.L.A.'s consideration is whether the alleged statement is actionable either under section 124A or section 153A of the Indian Penal Code.

It appears that the speech of Shri. Jureshastri has not been taken down verbatim. Assuming that there is enough evidence to prove that he made the aforesaid statement, it appears that no action would be possible either under section 124A or under section 153A of the Indian Penal Code. To substantiate an offence under section 124A what is necessary is that the speech must bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards the government established by law in India. In Rajagopal Rao v. The Province of Madras (I.L.R. 1949 Madras 189) it was held that the Cabinet of Ministers belonging to the Congress Party which administered the government of a Province was government established by law in India. In Kadarnath v. The Crown (A.I.R. 1949 East Punjab 2889) it was held that Ministers or Ministry as a whole constitute government as established by law and, therefore, to bring the Ministry into hatred or contempt is the same thing as bringing into contempt government established by law. The attack made by Shri. Jureshastri is directed against an individual Minister of the Central Government and not the Ministry as a whole. Section 124 A would not, therefore, be attracted and no action under that section would be feasible.

In respect of the offence under section 153A of the Indian

Penal Code, preponderant judicial opinion is in favour of holding that intention is necessary for its proof, although such intention may be gathered from the words themselves. Our High Court shares that view. See the case of Manantrai Rajji cited on page 368 of Patanlal's Law of Crimes, Seventeenth Edn. Even taking account of the offensive remarks it cannot be said that underlying the speech was the intention to promote feelings of enmity or hatred between caste Hindus and Harijans. It appears that the object of the speech and its whole tenor is concerned with the Hindu Code and not with fomenting trouble between caste Hindus and Harijans. The objectionable statement must be judged in that setting and would not, therefore, be actionable under section 153A of the I.P.C.

Evidently the statement of Shri. Jureshastri is defamatory for which an action can lie.

Ed/- P.H.Lad.

13-4

Remembrancer of Legal Affairs.

U.R. to H.D. (Special), No. 232-Conf1, dated the 13th April 1950.

Office of the R.L.A.

A specific allegation of misconduct against certain Government servants cannot be construed as tending directly or indirectly to bring into hatred or contempt the Government established by law. The difficulty in launching proceedings for defamation is that no names are mentioned and the allegation is left vague. The best course would be to issue a statement of denial, and to invite the writer to specify his charge by stating who the culprits were; whereupon they can proceed against him for defamation.

Sd/-P.M.Lad
18.8
Remembrancer of Legal Affairs.

U.R. to H.D. No, 11775 , dated the 16th August 1950.

V.M.D./9-6
4c.

Office of the R.L.A.

The question raised for R.L.A's consideration is whether a publisher of a newspaper can make a fresh declaration for the same paper under the same name after his previous declaration has been annulled or has become liable to annulment for not depositing security demanded from him. Under section 12(3) of the Indian Press (Emergency Powers) Act, 1937, where a deposit is required from the Publisher of a newspaper under section 7 and the deposit is not made within the time allowed the declaration made by the publisher under section 5 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled. Consequently, when a declaration made under section 5 of the Press and Registration of Books Act, 1867, is deemed to be annulled for failure to make a deposit under section 12(3) of the Indian Press (Emergency Powers) Act, 1937, the only penalty attached would be that the Publisher would not be entitled to publish the paper without making a fresh declaration under section 5 of the Press and Registration of Books Act, 1867. If he makes a fresh declaration, then security can be demanded extending to Rs. 3,000/- under the proviso to section 7(1) of the Indian Press (Emergency Powers) Act, 1937. It is immaterial whether the publisher makes a fresh declaration under section 5 of the Press and Registration of Books Act, 1867, under the same name and for the same paper or under a different name and for a different paper so long as the publisher is the same. Consequently, it would be open to the publisher to make such fresh declaration under the same name and for the same paper and it would be open to Government to enforce the deposit of security under the proviso to section 7(1) of the Indian Press (Emergency Powers) Act, 1937. The reply to the question would, therefore, be in the affirmative.

Sd/- P.M.Lad /6.9
Remembrancer of Legal Affairs.

Office of the R.L.A.

The question referred to the R.L.A. for advice is whether it will be feasible to take action in respect of the following three statements :-

1. *हल्लोड-सिंघाण लोड ऑन 21 नवंबर 1947 को*

2. They would bury Shri and Morarji.

3. Statements made by Shri Tulaidas Jadhav (at pages 16 and 17 of the printed booklet) in his presidential speech at the first session of the Maharashtra Prantik Shikharis Kenger Paksha at Wathar.

2. The first statement is merely a slogan and would not, therefore, be construed literally in the sense of involving personal violence to the Hon'ble Shri Morarji Dasai.

3. In the second case the actionable words are taken from shorthand notes of a speech which appear to be more in the nature of a summary. The literal Marathi words have not been reproduced, but only the translation is given. Judging by the translation it would seem that the words used may have been *मरण* (bury). In the context of the speech these words cannot also be construed to mean personal violence to either the H.C.M. or the H.M. (H). They would be capable of the construction of destroying their political influence.

4. The last concerned the presidential speech of Shri Jadhav which does not contain anything more than what is now the well-known stock-in-trade of political parties. The speech even taking account of the portions at pp. 16 and 17 would not be sufficient for the purpose of sustaining a prosecution for sedition.

Sd/-P.M.Ld./27.9

Remembrancer of Legal Affairs

No. H.L. No. 12866 : Dated 28th September 1947

No. of 1950

Advocate General's Chambers,
High Court,
Bombay, 24th July 1950.

U. O. R. to the Advocate General of Bombay,

No. 103 (confidential), dated 20th March 1950.

O p i n i o n

On the whole, I am of the opinion that news sheet as defined in clause 6 of section 2 of the Indian Press Emergency Powers Act, 1931, cannot comprise a News Board of the nature mentioned in the Statement of the Case.

Sd/-

Advocate General.

V.H.D./2-6

4c.

CONFIDENTIAL.

Office of the R.L.A.

A copy of the Advocate-General's opinion along
with a copy of the Statement of the Case is forwarded
herewith.

Sd/- P.M.Led.

Remembrancer of Legal Affairs.

U.R. to H.D. (Foll). No. 721-Conf dated the 27th September

1950.

V.M.D./B-6

4c.